and should continue to be bilaterally negotiated between the PTOs. He confined the role of the ITU to the work being performed by the ITU's Telecommunications Standardization Sector, where Study Group 3 is tasked with creating a framework within which the international carriers can establish revenue-sharing mechanisms. He also indicated that the ITU membership has agreed to a Recommendation (D.140) which sets a timetable of five years for bringing accounting rates closer to costs (see article "The "call-back phenomenon: a complex study", *ITU News*, No. 5/96, pages12-14). The Recommendation also defines those costs which can legitimately be attributed to international service, so as to distinguish between costs and subsidies.[12]

8. It is crystal clear that when the ITU, the international organ to which the 187 member countries involved in telecommunications belong, including the United States, accepts that it has no jurisdiction to enforce an applicable accounting rate and leaves the determination thereof to the member countries, whose carriers can agree thereon in the bilateral commercial negotiations that take place in order to resolve such matters, the FCC, which is undoubtedly not a supra-national rate-setting body, but merely the regulator of one of the 187 member countries, is obviously equally without jurisdiction to perform such a role. The universal lack of jurisdiction of all the national regulatory agencies, including the FCC and the NTC, is a fact with which we have to live with.

9. Since the role of the ITU is merely confined to making the studies on the proper benchmarks to be applied in determining the correct cost level, as distinguished from the subsidy, for dissemination to the members so that they can utilize it as guidelines for accomplishing its goal to bring down the accounting rate level nearer to cost within the five year time frame accepted by the members, it is logical to assume that the proper role of the FCC, in representation of the United States of America, is to work within the framework of ITU and to submit its ideas on such benchmarks to Study Group 3 of the ITU, with the hope that the soundness thereof will merit its inclusion in the Recommendations of the ITU to the general body for adoption. Once approved, such benchmarks (hopefully including those recommended by the FCC) shall be observed by the members in striking an agreement on the glide path of the reduction of the settlement rates in their bilateral negotiations, with the goal of arriving at the cost level within 5 years, as accepted by all the members of the ITU. This, unless for special or extraordinary reasons, a longer period of time becomes necessary. Flexibility, resiliency are the proper tools of the reform policy; certainly, not unbending rigidity, if the words of the FCC Notice are to be believed.

10. We observed that with a consciousness of such jurisdictional and legal considerations, the FCC Notice of Proposed Rulemaking is couched in

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[12] See excerpts from the speech of Pekka Tarjanne, Secretary General of the ITU in pp. 3-7, ITU News 9/96

language which purports to be exclusively addressed to the U.S. carriers and what is described to be "the settlement rates they pay to foreign carriers".[13] The National Telecommunications Commission, the Philippine Regulatory Agency, as well as the Philippine carriers operating under its exclusive jurisdiction in connection with their activities within Philippine jurisdiction, make these Comments in response to the kind invitation of the FCC *only by way of a special appearance, which should not, and cannot be regarded to be an acceptance of, or a submission to the authority and jurisdiction of the FCC* in the premises. In so far as its rules are intended to bind only the American carriers, which are admittedly within the jurisdiction of FCC, we leave it to the U.S. carriers to react to the proposals. However, the Philippine carriers operating beyond the FCC's jurisdiction formally reserve their right to disclaim the authority or jurisdiction of the FCC over matters relating to, or affecting Philippine carriers not operating within the territorial limits of the United States.

11. The rationale for this reservation applies with greater force to the NTC, the Philippine Regulatory agency, the counter-part of the FCC in the Philippines, which admittedly operates independent of the FCC. Since the comments have been solicited on the premise that no definite rules have thus far been issued and that the FCC is merely inviting comment so as to aid or assist it in formulating its rules, the NTC, in a spirit of cooperation, submits these comments in the hope that we can give the FCC an insight on the Philippine Regulatory Policies and the stage of its telecommunications development, the need for the completion of its network infrastructure and the necessary telephone density, so that the FCC could explore the possibility of adopting a policy *in complete harmony* with that of the Philippines or at the very least, consider the implications of the proposed policy on the total global strategy which has yet to be agreed upon by all the country players, if chaos is not to be allowed to occur in the global network to the detriment of all the parties and international commerce and trade.

12. With due respect, we view with a quizzical eyebrow the fact that while the rules are ostensibly addressed to the U.S. carriers *and no other*, the proposed FCC benchmarking proposals and its proposals to enforce them, are in fact poised and directed at foreign carriers and the PTTs, rather than against the U.S. international carriers, which, under the present accounting rate system, have negotiated and agreed to the existing accounting rates. It is, therefore, an attempt to substitute for the bilateral commercially negotiated agreements forged in the market place, the benchmarks and enforcement mechanisms unilaterally conceived by the FCC. The FCC Notice is intended to lead to the issuance of the benchmarks and enforcement mechanisms which will allow the FCC to encompass and regulate the actions of foreign governments and carriers, rather than to exercise its power to penalize U.S. carriers with sanctions for their failure

[13] See par. 19, FCC Notice of Proposed Rulemaking

to negotiate accounting rate reductions satisfactory to the FCC, on the assumption that the latter authority even exists in the statute books.

13. If the FCC is genuinely concerned about the high rates U.S. rate-payers pay for international service, there are areas independent of the international settlements arena where the FCC can clearly exercise its authority to change, without any fear of exceeding its jurisdictional limitations. For example, the FCC could home in and focus on the profit levels of U.S. international rates allowed to be charged by American carriers, which generally are at least three to five times as high as those for domestic services. *Instead, the FCC has chosen to deregulate all international rates of U.S. carriers.*[14] This is obviously an action at war with the objectives and purposes of the FCC Notice of Proposed Rulemaking and is unwittingly an indication that the regulatory power, unwittingly, would be exercised with an uneven hand, if the FCC persists in its present plans. We continue to refuse to believe this to be the case and trust that when our comment in this regard is taken into account, the protection of the American consumer from high tariff rates can be properly addressed, without having to infringe on the limitations of the FCC's jurisdiction and powers.

14. As a threshold matter, the FCC has neglected to describe the legal authority upon which it relies for its proposal to order U.S. carriers not to make settlement payments required by their operating agreements with foreign correspondents that have "failed to make meaningful progress" toward complying with the benchmarks. While the FCC attempted to justify its proposals on policy grounds, the Notice fails to describe in any meaningful detail the legal authority for the Commission's proposed actions.[15]

15. Indeed, the FCC Notice seems to have ignored or brushed aside several significant legal issues which go to the very core of their power and authority in the premises. For example, it is not clear that the FCC is specifically authorized and empowered under U.S. law to proceed with its proposals. With respect to U.S. carriers, Congress (and the Executive Branch) have broad authority to regulate and control the behavior of U.S. corporations in foreign commerce.[16] Decisional authority examining federal statutes and actions have

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[14] It may be pointed out that AT&T's international message telephone service or Reach Out World rates for the US-Philippine route have not fully reflected the steep decline in accounting rates between 1980 and 1987.

[15] While the FCC makes passing references to recommendations in the ITU,OECD, WTO and other international fora designed to bring international accounting rates closer to cost, such recommendations do not appear to expressly confer any legal authority on the FCC for its proposals. Such an anointment conferring such an authority to the FCC, to the exclusion of other national regulatory agencies, is absent from the records.

[16] For example, it is well-settled under U.S. law that the U.S. government may alter, delay, cancel or otherwise exert influence over commercial arrangements upon a determination that such actions

been careful, however, to enforce and support the exercise of federal authority only when it is clearly expressed. Absent an explicit delegation of authority from Congress to act as a *de facto* trade negotiator (and supra-national telecommunications rate setting body), the FCC arguably can be acting in an *ultra vires* manner.

16. Section 201 of the Communications Act appears to be the only section of Title II which applies to "divisions" (*i.e.*, settlements). This section requires carriers *after an opportunity for hearing* to establish rates and reasonable charges and divisions for such routes (within the territorial and jurisdictional limits of the United States). It is, however, not free from doubt and no authority can be found, expressly ruling that this section can be relied upon to justify the exercise of authority by the FCC over international accounting rates, in complete disregard of the authority of its regulatory counter-parts in other parts of the world and the lack of binding effect of its enforcement orders on foreign carriers operating beyond the territorial limits of the FCC's jurisdiction.

17. Even in the domestic arena, the ability to secure recovery of joint and common costs from a particular service has been (and remains today) basically a policy decision. The FCC has no jurisdiction, for example, to tell any U.S. state jurisdiction the relative percentage of local exchange costs to be recovered from intrastate toll as opposed to local services. To construe the existence of any right under the Communications Act for the FCC to judge the reasonableness of a foreign carrier's (or foreign regulator's) decision about the proper share of common costs to be recovered from international service appears difficult, if not impossible to sustain.

18. While it is conceded that the FCC is authorized to regulate the rates of U.S. international carriers, its benchmarking proposals clearly exceed such an authority. It is an undisguised attempt to unilaterally reduce the rates charged by foreign correspondents in a manner that utterly fails to respect international comity or the national sovereignty of affected foreign entities. At the minimum, such proposals contradict Article 6.1.1 of the International Telecommunications Regulations which explicitly recognizes that the level of toll charges is a "national matter"[17]

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are in the national interest. This authority rests upon the explicit recognition that foreign trade is near the core of its foreign policy and congressional authority.

[17] *The International Telecommunications Regulations, Final Acts of the World Administrative Telegraph and Telephone Conference*, Art. 6.1.1., Melbourne, Australia 1988 (recognizing that the level of toll charges is a "national matter" but recommending that carriers avoid "too great a dissymmetry between the charges applicable..")

19. It must also be considered that under the multilateral agreements, such as GTO (particularly in the light of the Uruguay Round), the ITU Treaty, and the existing bilateral agreements with the Philippines, the United States is bound and obligated to respect the laws and policies of its foreign counter-parts and that there is a concomitant restraint which precludes the United States from imposing U.S. policy preferences on an extra-territorial basis.

Adoption of incremental cost of terminating international service as one of the benchmarks is being questioned -

20. In coming up with an approximation of the termination interconnection charges impose in other countries, the FCC suggests the adoption of the concept of the total service long run incremental cost, with the knowledge that it has not gained a general acceptance by international organizations considered authoritative on the matter, much less, by the other countries involved in rendering global telecommunications service, as the correct criteria for determining costs. As a matter of fact, the ITU has adopted a cost based method premised on a "full costing", rather than a incremental costing. Moreover, the approach which the FCC seems to favor - i.e., a "*proxy incremental cost*" approach, is currently under a court challenge in the U.S. regarding the FCC's attempt to utilize it for domestic service.

21. With due respect, It must be pointed out that the proper benchmarks to be used as a guideline by the carriers engaged in bilaterally negotiating an accounting rate agreement is a matter that should better be left to an impartial and independent international organization, such as the ITU, which is the forum where these matters are correctly addressed, *and not by the FCC*, which is the regulator of only one of the one hundred eighty seven (187) member countries in the ITU. As a matter of fact, the ITU, where all the countries affected are represented, is presently conducting the studies, which hopefully will lead to its making recommendations on the methodology and proper benchmarks to be adopted by all the member countries on the subject. *The proposal of the FCC should, therefore, be submitted to the ITU and not unilaterally decreed and enforced by the FCC, whose jurisdiction and authority to do so is clouded by infirmity.*

22. As a matter of fact, under WTSC Resolution 29, it is affirmed that the national sovereignty of all member countries must be respected. It may also be pointed out that as stipulated in International Telecommunications Union Recommendation D.140, administrations "shall by mutual agreement establish and revise accounting rates to be applied between them, taking into account the Recommendations of the ITU-T [*and not that of the FCC*] x x x ". When it is considered that the ITU-T (the International Telecommunications Standardization Bureau), as a permanent organ of the International Telecommunications Union (ITU), is responsible for studying technical, operating and tariff questions and issuing Recommendations on them with a view to standardizing telecommunications on a worldwide basis, the attempt of the FCC to substitute for the guidelines and recommendations of the ITU-T, its own unilaterally conceived guidelines for the revision of the accounting rate agreements heretofore bilaterally negotiated between the administrations on the basis of the standing ITU-T Recommendations, should be placed in the back burner. Particularly, when logic persuades us that the FCC should defer to the Recommendations of the ITU-T, as a matter of respect and international comity.

23. More so, when the records of the ITU show that it has been, and is now still engaged in a serious "in depth" study of the accounting rate reform. If the FCC preempts the ITU efforts and unilaterally issues benchmarks and rules on the same subject, which may differ from those to be issued by the ITU itself, where the United States is a member in good standing, the questions of authority and jurisdiction it will provoke and invite, are too serious to risk and should be, as it can be avoided.

24. The philosophy behind the FCC's proposed benchmarks, is premised on the fear that the use of the orthodox method of bilaterally negotiating the settlement rates, will permit foreign carriers to recover more than their incremental cost of terminating international service since the tariffed components prices to be used as a basis in such negotiations, reflect the foreign carrier's incremental cost plus a significant contribution to common costs.[18] If only to point out that it is unfair to disregard all the alleged common costs, and to rely solely on the incremental cost of terminating international service, we can point out that in such cost estimation, access to the "subscriber's loop" is not imputed.

25. It may be stated that the use of incremental costing may find a more justifiable application in a country with a more mature market, where sectoral viability has already been attained as a result of a broader market base due to its high telephone density and where a pronounced degree of re-balancing of the rates has already produced the desired result of eliminating the need to subsidize the local exchanges, which already have a viability on a "*stand alone*" basis.

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[18] See par. 42, Notice of Proposed Rulemaking dated Dec. 19, 1995

26. It should also be recognized that in the design of the tariff structures in a developing country, social values are a necessary ingredient of the tariff for the delivery of basic telecommunications services and as repeatedly stated earlier, the cross-subsidy from the international revenue is built-in the structure. This accounts for the international tariff exceeding incremental costs being pointed out by the FCC.

27. The re-balancing of the rates can be undertaken by a developing country only when it has reached a degree of economic development that allows it to safely risk the political and social implications. This is the rationale for the ITU's recommendation that an unequal sharing of the settlement between a developed country and a under-developed country, can even be made to apply in such a situation. This runs counter to the proposal of the FCC, which ignores such differences and seeks to maintain a parity of treatment between all countries, oblivious to such fundamental factors.

Differences in cost of providing service between developed countries and under developed countries, must be recognized -

28. The ITU recognizes that the cost of providing services in a developed country cannot be equated with the cost of providing the same service in an under-developed country, and that such costs depend on many factors which vary from country to country. The fundamental differences include the following:

a) The higher cost of money due to the lower credit rating of developing countries has a significant impact on the servicing of the amortization of the cost of capital required to promote telephone density and the development of the required network infrastructure.

b) The economies of scale and the required density of the network, considering the demographic and geographic characteristic of a particular country, will have a decided effect on the cost per line.

c) Due to their lower degree of economic development, developing countries generally import their telecommunications equipment, resulting in higher costs on account of shipping, insurance, customs duties and taxes.

In NTC's view, the FCC's country specific benchmark option better suits the Philippines -

29. After a careful perusal of the FCC's Notice of Proposed Rulemaking, it is the considered opinion of the NTC that the fairest treatment for the Philippines can be achieved by adopting the FCC's country specific benchmark option. Our earlier comments clearly showing the special factors and circumstances obtaining

in the Philippine scenario, different from the facts or the nuances thereof, found to exist in other countries, call for the adoption of the FCC's country specific option benchmark. The use of other alternative benchmarks based on "averaging" or the use of the classification, categorizations or groupings of several countries for purposes of lumping them together so that they can be treated as a group characterized by the same degree of economic development, fails to accord the flexibility of treatment which the FCC believes to be necessary in order that the FCC policies can be applied correctly and judiciously, taking into account the differences in the facts and situations found to exist in different countries.

30. The NTC endorses the FCC view that the reform of the accounting rate system must lead to more cost oriented rates and should ultimately take into account the relevant cost trends. It equally endorses the FCC's position that a transition schedule based on the countries' level of economic development must be instituted so that the carriers of developing countries, which have substandard telecommunications infrastructure, including low levels of network build-out and low levels of network reliability, may not be required to make an immediate shift to cost-based settlement rates, not unless and until they can re-balance their rates to eliminate their dependence on the subsidy coming from the international revenue, so as to give them the time to upgrade their network.

31. By using the country specific benchmark option, the Philippines should be allowed a longer transition period so as to provide additional flexibility for Philippine carriers, given that the statutory and regulatory requirements adopted by the Philippines in the past, described in detail earlier, compelled the use of high international rates to promote telephone penetration and infrastructure development . The facts and figures in the case of the Philippines clearly show that the two year period of transition suggested to be applicable to it under the general benchmarks, is inadequate. Such a short transition period could possibly be justified in the case of other countries whose records are dissimilar from the Philippines, but it is completely out of place, when applied to the Philippines, where the Philippine carriers would suffer a loss of a large percentage of their annual revenue, if such a short transition is adopted.

32. The country specific transition period which should be applied to the Philippines should take into account the degree of the development of the telecommunications network infrastructure in the Philippines, the per capita capital index applicable to the Philippines and the telephone density and penetration we have achieved up to the present time. Given these facts, we must input the goals to be achieved under our expansion and development programs, the time and the capital required to reach them and allow us to provide the necessary telecommunications highway compatible with those of the rest of the global network, so that international commerce and trade is not impeded. The transition period for the Philippines should allow it to complete its expansion programs, using the cross subsidy relied upon until the re-balancing of the rates can be

accomplished in order to eliminate the need for such a subsidy at the close of the transition period. The length of the transition period is dependent on the facts and figures showing how the completion and improvement of the infrastructure can be achieved to the degree required, and not for the purpose of merely enjoying a lucrative subsidy, absent the need therefor.

The methodology employed, grouping countries together on the assumption that the countries in the group are all at the same level of economic development, is flawed and iniquitous -

33. In the FCC Notice, it is explained that a standard measure of economic development is income per capita and that the World Bank classifies countries on the basis of four levels of economic development using gross national product (GNP) per capita. It mentions that the ITU also uses the same classification scheme. The four levels of economic development are ; (1) low income, GNP per capita of $726 or less; (2) lower-middle income, $726-$2,895 per capita; (3) upper-middle income, $2,896-$8,995 per capita; and (4) high income, $8,956 or more.[19] In the Notice, the FCC has deviated from such a methodology by proposing that the lower-middle and upper-middle income countries be merged into only one category, re-named as the "middle income" group, for purposes of calculating and implementing new benchmark settlement rates. Our comments are solicited on the soundness of such a methodology.

34. The attempt to over-simplify, by merging the two middle groups, results in a wide disparity in the per capita income between the lower end of the first group of $726, compared to the high end of the second group of $8,955. Such a wide disparity of the per capita income of the countries in the merged group defeats the purpose of applying the benchmarks for computing the settlement rate as fairly as possible, calibrated according to the actual level of economic development of the countries to which the benchmarks are to be applied. In the presentation of AT&T to some of the carriers of the Asia Pacific countries, the application of such a novel classification will result in the following countries falling within the merged middle group, to wit:

a) Thailand
b) Indonesia
c) Korea
d) Philippines
e) Malaysia

[19] Title III, par. 44, FCC Notice of Proposed Rulemaking dated Dec. 19, 1996

35. It is our observation that the wide gap in the ranges between the low end of $726, as against $8,955 at the upper level, results in a iniquitous treatment of the countries at the lower end, compared with the countries at the upper end. This is because the relative degree of their economic development based on their respective per capita income obviously shows that they do not belong to the same economic group as those in the upper end. The disparity in their per capita income, and by necessary inference, the difference in the degree or level of their economic development, clearly exposes the flaw in the methodology, in so far as it is supposed to be used in approximating and applying the same benchmarks in determining the length of the transition required for all countries at the same level of economic development.

36. To vividly illustrate our point, let us cite as an example the fallacy of placing the Philippines at the same level of economic development with South Korea. The wide disparity in their level of economic development is indisputable. Particularly, when we consider that the latest estimate of the telephone density of the Philippines is 3 telephone main stations per 100 inhabitants, as of the end of 1996 while the telephone density of Korea, stood at 47.6 telephone main stations per 100 inhabitants.[20] The conclusion is irresistible that to come up to the standards of its peers and expand or improve its net work infrastructure to meet the demands of the global commerce and trade, the Philippines lags so far behind South Korea so that it needs a longer transition, as against that needed by South Korea in accomplishing its objectives. The method suggested by the FCC fails to provide the flexibility sought to be achieved, where it is envisaged that lesser developed countries should be given a longer transition period for reducing their accounting rates to a cost-level.

37. Further, the lower GNP per capita income of the Philippines, as against that of South Korea, indicates that the cross subsidy from the high international rates cannot be drastically removed, without dislocating its program to improve its network infrastructure and increase its telephone density to a point which approximates even only the level of South Korea. This fact is again recognized by the FCC and strengthens the validity of our comment that a country specific benchmark, which takes into consideration these valid and material points of difference, must be pursued at the negotiating table between the American carriers and the Philippine carriers, where all the data and figures can be utilized to arrive at a fair accounting rate under a glide path within the span of the transition period to be fixed on the basis of more accurate country specific data and figures. The same case can be made with reference to a comparison between the degree of economic development of Taiwan, Malaysia or Thailand, as against the Philippines. All of these, persuades us to believe that a different length of the transition period should be agreed upon for the above countries, in order to reflect such wide differences.

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[20] p. 53, Asiaweek issue of Jan. 17,1997 (Telephone figures from Int. Telecom Union)

38. It must be pointed out that there is a wide disparity between the telephone densities of the Philippines, as against that of South Korea, Taiwan, Malaysia and Thailand with which countries it is grouped together under the benchmarks. This is reported as follows:[21]

a) Philippines - 03.0 main stations per 100 inhabitants[22]
b) South Korea - 47.6 main stations per 100 inhabitants
c) Taiwan - 43.5 main stations per 100 inhabitants
d) Malaysia - 16.4 main stations per 100 inhabitants
e) Thailand - 5.7 main stations per 100 inhabitants

No extended explanation is required to arrive at the conclusion that the network expansion necessary in the Philippines will entail a much larger project in terms of financing costs, as well as the time required to complete it, compared to what is needed by the other countries with which the Philippines is grouped with. The greater need and dependence on the subsidy imbedded in the settlement, as well as the longer completion time required in the case of the Philippines, is equally beyond question. This shows that the Philippines can ill afford to be given the same length of a transition period and the same amount of the subsidy to be given to South Korea, Taiwan, Malaysia and Thailand, when the wide variance in their respective degrees of economic development and the differences in the size of the network expansion required in each case, coupled with the more massive financing that it entails, is taken into consideration.

39. This state of the facts suggests very strongly that in fairness to the Philippines, a country specific treatment should be accorded to it, and that it does not make sense to equate or group it with the other countries enumerated above. An "apple to apple" grouping or classification is called for.

Level of Accounting rate in place among countries in the same grouping, should first be rationalized -

40. In pursuing the needed reform in order to bring down the settlement rates to approximate the cost level, we suggest that consideration be given to the fact that the accounting rates presently in force do not even reflect the differences in the degree of the economic development of the countries lumped together in the same economic class. As pointed out earlier, the Philippines is being grouped in the same economic class as Taiwan, South Korea and Thailand and we expressed our concern that such countries are far ahead of us in the level of economic development. And yet, it must be pointed out that the Philippines has a

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[21] p. 53, idem.
[22] Estimate as of Dec. 31, 1996

accounting rate of $1.00 with the United States carriers, while South Korea, Taiwan and Thailand have an accounting rate of $1.22, $1.20 and $1.50 respectively. Such an abnormality must first be rectified to reflect the relative difference of the economic development of the Philippines, as compared with such countries which have by far, a much greater degree of economic development.

41. To rationalize the situation, a grading of the economic development of the different countries mentioned above should be made and the distortion of accounting rates applied to them respectively, as compared to the Philippines, has to be rectified and adjusted in line with the order of their economic development. Once having done this, the respective lengths of the applicable transition periods can be set. The last objective is to ascertain the gradation of the glide path to be observed within the transition period agreed upon in order to approximate the true cost level at the end of their respective transition periods, taking into consideration the targeted development of the proper network infrastructure embodied in the definite plans set by the regulators of the respective countries under the umbrella of their own national telecommunications policies.

The Philippines is committed to cost orientated accounting rates, as shown by its historical record -

42. Our comments are sought on the relative merits of foreign carriers commitment to achieve settlement rates within the applicable cost benchmarks to be agreed upon. The idea was to insure that such foreign carriers continue enjoy accounting rate levels above the true cost levels, only to allow them to improve their network infrastructure and not merely to satisfy their avaristic desire to maintain monopolistic policies at accounting rate levels prejudicial to U.S. consumers or to simply divert such incremental margins, to projects or expenses completely unrelated to the rolling out of new telecommunications infrastructure or increased telephone density or penetration directly connected to insuring that they assist in augmenting and improving the global telecommunications network to the benefit of the world community.

43. We respectfully submit that the Philippines and the Philippine carriers deserve such a special treatment under the historical recording of the glide path of the reduction of the accounting rates agreed upon by the Philippine carriers with AT&T and the other American carriers. The records attest and confirm the fact that the glide path of the reduction of the accounting rates negotiated bilaterally by AT&T and the other American carriers, such as MCI and Sprint, with the Philippine carriers, notably the Philippine Long Distance Telephone Company, have out-performed the rest of the world. This can be attributed to the honest efforts and ability of the American carriers, together with their Philippine correspondents, to respond to the required adjustments of the accounting rate levels from time to time in order to approximate cost-levels, without impairing their mutual efforts to

upgrade their telecommunications network infrastructure, particularly that of the Philippines, which, as a developing country, can ill afford too abrupt a decline in the accounting rate level, without sacrificing its ability to roll out the necessary line build outs and the network expansion, mutually needed to bring the Philippines into the twenty first century.

44. As an example, we submit the following statistical record of the decline in the accounting rates applicable to PLDT on the United State-Philippines traffic stream, against the rest of the world, during the period from 1991 to 1996, to wit:

Decline in Accounting Rates (AR)
PLDT vs. Global
1991 - 1996

	PLDT		Global	
	AR US$	Decline %	AR US$	Decline %
1990	1.75		1.89	
1991	1.68	(4.0)	1.83	(3.2)
1992	1.64	(2.4)	1.76	(3.8)
1993	1.45	(11.6)	1.68	(4.5)
1994	1.34	(7.6)	1.56	(7.1)
1995	1.22	(9.0)	1.37	(12.2)
1996	1.05	(13.9)	1.21	(11.7)
Average Annual Decline		(8.1)		(7.1)

45. The 8.1% average annual decline in the accounting rates negotiated by PLDT with the American carriers during the above period, exceeds the 7.1% average annual decline of the accounting rates resulting from its negotiations with the other global carriers on their respective traffic streams. Let the facts speak for themselves. The Philippines has definitely earned the right to a special treatment, unlike that generally contemplated in the FCC Notice.

Macro-Analysis of US Settlement Experience in the Philippines calls for a Country Specific Special Treatment -

46. The FCC Notice of Proposed Rulemaking invokes the reported increase in U.S. settlements to the rest of the world, from US$2.8 billion in 1990 to US$5.0 billion in 1995, as the basis for its present move to accelerate the reduction of accounting rates closer to cost. A cursory examination of the said figures reveals the Philippines' contribution to the over-all results and provides telling and irrefutable arguments that the experience in the Philippines puts it in a singular

position, calling for a different treatment considering the fundamental differences of its record, compared to the general pattern accounting for the deficit, to wit:

a) U.S. settlements to the rest of the world increased by 80% from 1990 to 1995. With the Philippines, however, U.S. settlements increased by only 22%.

b) Viewed from another perspective, in 1990 the Philippines accounted for 4.7% of U.S. settlements. By 1995, this percentage of settlements attributable to traffic with the Philippines had declined to 3.2%.

c) In 1990, the U.S. carriers paid approximately U.S.$0.83 for every minute of traffic sent to the Philippines. In 1995, that amount had gone down to U.S.$0.54 per minute, a reduction of 35%.

47. It is, therefore, safe to conclude that the Philippines had a marginal, and rather insignificant, impact on the reported increase in U.S. settlements. Furthermore, the "price" paid by the U.S. for calls terminated in the Philippines had sustained a substantial decrease, following successive and continual reductions in the accounting rate, even as volume of traffic grew by more than 50% during the same period.

The settlement process is only one of the integral elements of the relationship between developed and developing economies -

48. One way of viewing the settlement process is to regard it as an integral element in a symbiotic relationship between developed and developing economies. Even if one were to take the simplistic and somewhat uncharitable view that the settlement surpluses enjoyed by most developing countries represent a form of transfer payment, these surpluses provide the wherewithal to procure related equipment from the more economically advanced economies. In particular, it should be mentioned that the Philippines imported U.S.$277 million worth of telecommunications equipment from the U.S. in 1995, a figure which exceeds by a wide margin the net settlement of the U.S. to the Philippines of U.S.$161 million for the same year.

49. Extrapolating over the next five years, the Philippine telecommunications industry is expected to spend over U.S.$13 billion for expansion. This will undoubtedly benefit the United States in at least three ways: first, in providing the needed capacity to enable the United States to expand its export potential with the Philippines, secondly, in ensuring the growth of the Philippine telecommunications market to enable the expansion of traffic between the two countries, and lastly, improve the rate of call completion in order to reduce the price of international tolls payable by American consumers . The ability of the Philippine carriers to finance this aggressive expansion program hinges to a large

extent on the continuation of a reasonable level of settlement receipts from its foreign correspondents, since only by demonstrating financial viability can they hope to attract the required debt and venture equity capital for this ambitious, but necessary, undertaking. An abrupt and unsustainable decline in the settlements flow will set off a vicious cycle that economic history has abundantly shown to be counter-productive to the interests of all the parties concerned.

Ambitious National Goals of the Philippine Basic Telephone Program must be supported by meaningful net settlements from foreign correspondents -

50. The official records of the NTC show that the documents submitted by the duly authorized carriers in the Philippines disclose that they have an average cost of investment per line of U.S.$ 1,524.12 and that their average operating cost, based on the projected 1997 figures is U.S.$ 357.77.

51. Pursuant to Republic Act. No. 7925 and Executive Order No. 109, the Commission has embarked into a Basic Telephone Service Program which will increase the telephone density index of the Philippines to around 12 telephone main stations per 100 inhabitants or an additional telephone line installation of 6 million from 1997 to 2000. This would require an estimated investment of around U.S.$ 9,144,730,000. When we relate this to the net settlement figures expected to be derived from the United States-Philippine traffic stream, the massive amount of financing required to complete the Basic Telephone Service Program of the NTC dwarfs the expected revenue from the net settlements, even discounting the pressure being applied to lessen the dependence of the Philippines on such settlements. If it is conceded that the completion of such an expansion and improvement program would benefit, not only to the Philippines, but also the United States and the rest of the global community, it becomes self evident, that if the planned reduction in the net settlements being advocated, is abrupt enough to derail such a program, it is definitely "penny wise, pound foolish".

III
Summation -

1. All told, the Philippines has made a country specific case, distinct from that of the other countries with whom it has been classed under the suggested benchmarks in the FCC Notice, and it has clearly shown that:

a) It definitely needs a longer transition, other than the two years prescribed under the category to which it has been assigned, such longer period to be determined in bilateral negotiations with the American carriers; failing which all the plans and efforts of the Philippines, as a developing country, to improve its networks could be hindered or aborted as a result of the revenue losses it would sustain, if the general benchmarks are erroneously applied to it.

b) Under its record and policies, the Philippines has "demonstrated an actual commitment" to allowing or encouraging competition.

c) It has further made a case that it has opened up the United States-Philippines traffic stream to substantial and meaningful competition presently being offered by nine international long distance carriers.

d) It has already been negotiating with its American correspondents on the downward glide path of the applicable accounting rate at a pace and a degree steeper than the average decline worked out or agreed to by their counter-parts in the rest of the global community. The correspondent carriers should be left alone to commercially negotiate mutually beneficial terms, under the guidelines provided by the ITU.

e) That the Philippine carriers shall be filing applications with the NTC for a re-balancing of their rates. This will serve to allow the Philippine carriers to reduce their collection rates on the international service and gradually eliminate the need for a cross-subsidy for the LEC's. Hopefully, this will give the local exchanges feasibility, while leading to the long term objective of the FCC to move the settlement rates closer to cost. What is more important, the purpose is to provide

universal access to the Filipinos, traversing the 7,000 islands which constitute the Philippine archipelago.

2. It is the view of the NTC that the length of the longer transition period and the glide path of the reduction rate to a cost-oriented settlement level, should be addressed and resolved by the American carriers and the Philippine carriers, in their bilateral negotiations, without the intervention of either the FCC or the NTC. The past experience, where we have left them alone has shown their success resulting in the dramatic growth in the international revenue between our two countries, proof enough that our carriers can best decide in a commercial bilateral negotiation, the proper reductions in the settlement rates applicable periodically, compatible with their respective interests. This is also the current ITU view.

3. The determination of the correct cost level can equally be left to them, after considering the facts and figures best known or available to the parties.

4. In this manner, while the carriers can conservatively agree on the length of the transition period, so as to insure that the network development plans are not adversely affected by the revenue losses which will be suffered if the reductions are made too abruptly, they can agree on a resolutory condition to the effect that if and when the re-balancing of the rates and the elasticity of the growth of the out-going traffic from the Philippines allows the parties to reduce or abandon the cross-subsidy at any point in time during the transition period, the downward adjustment to the cost-level of the settlement rate, can automatically be calibrated. This resolutory condition best assures the FCC that the American carriers and their Philippine correspondents will only use the subsidy, imbedded in the settlement rate, in order to cushion the impact of the reduction of the accounting rate closer to the cost level on their development programs.

5. The FCC Notice of Proposed Rulemaking suggests that the above alternative transition plan, whereby, under a country specific option, we can leave the carriers to negotiate the final cost level and the length of the transition period in the bilateral commercially negotiations, is one of the alternatives which can, and should be explored and considered. If so decided, the authority therefor should be incorporated in the final rules to be eventually issued.

We thank you for giving the NTC and the Philippine Telecommunications industry, the opportunity to express our views on the subject of the FCC Proposed International Accounting Rate Reform, and we hope that your policies and ours can be reconciled and harmonized to the mutual advantage of our peoples, carriers and our respective Governments.

With the assurances of our great esteem.

Very truly yours,

SIMEON L. KINTANAR
Commissioner

ANNEX "A"

Feb. 4, 1997

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington D.C. 20554
United States of America

Dear Sirs,

This letter will serve to advise you that we have read the Comment dated Feb. 4, 1997, filed by Commissioner Simeon L. Kintanar of the National Telecommunications Commission of the Republic of the Philippines with your Office and as the International Gateway Authorized Operators in the Philippines, and we hereby adopt by reference the full text of his Comment and express our complete and unanimous support for his stand, taken on behalf of the National Telecommunications Commission, as well as the interests of all our companies engaged in the international telecommunications business.

Our indorsement and support is evidenced by this letter, duly signed by our duly authorized representatives, which we have consented to be attached to the NTC's Comment as Annex "A" thereof.

Capitol Wireless, Inc.

By: _____

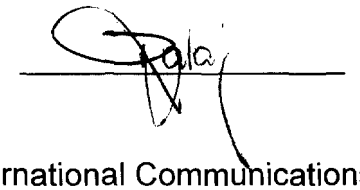
Digital Telecommunications Phils., Inc.

By: _____

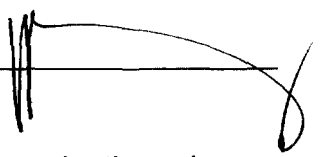
Eastern Telecommunications Phils., Inc.

By: _____

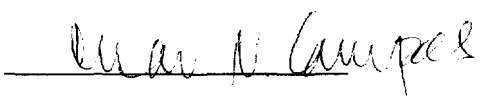
GMCR, Inc. (Globe Telecom)

By: 

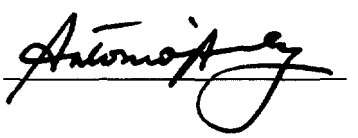
International Communications Corporation

By: 

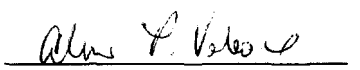
Isla Communications, Inc.

By: 

Philippine Global Communications, Inc.

By: 

Smart Communications, Inc.

By: 

Philippine Long Distance Telephone Company

By: 

"B"

PLDT
Touching Lives

INTER-OFFICE MEMO

January 28, 1997

TO : Atty. Antonio M. Meer
FROM : Mr. Nestor A. Virata
SUBJECT : **AT&T SERVICE IMPROVEMENT PROGRAM**

The main objective of the AT&T Service Improvement Program was to improve completion rate of incoming calls to the Philippines in order to improve the efficiency of the AT&T network in carrying the calls to the Philippines. After the break-up of AT&T in mid-1980's AT&T Long Lines had to pay the RBOC's a fee of US$ 0.25 for every call attempt to access the international network. Based on service observation reports discussed during meetings with AT&T officers, several attempts had to be made before succeeding in terminating a call to the Philippines. This translates to an expense item of more than US$ 0.50 for every completed call. The same AT&T officers disclosed that such expense on call attempts account for about 60% of their operating expenses. The objective of the AT&T Service Improvement Program was to bring down AT&T's operating expenses by reducing unsuccessful call attempts from the RBOC's vis-a-vis improving call completion rate to the Philippine network.

During the early/mid 1980's, Mr. Felix (Alex) Flores II who was the head of PLDT Long Lines Division and I had had occasions to attend meetings with AT&T especially during or after Intelsat Traffic Global Meeting in Washington USA. During that time, the AT&T's Country Manager for the Philippines was Mr. Ron Carr. He was assisted by Messrs. Stan Kozakowski and Dave Beaton on matters regarding quality of service. In one of the conceptual meetings with Mr. Ron Carr, he brought forward an idea of financing the service improvement program for PLDT, so that call completion rates to the Philippines would be improved thereby reducing call attempts and correspondingly bring down the operating expenses in terms of lesser remittances to the RBOC's.

It may be worthwhile mentioning that Mr. Ron Carr had introduced several progressive ideas during his term as Country Manager for the Philippines. He was part of the team who initiated the USA Direct Service which was intended to serve the US Servicemen who were transitting through Clark Air Force and Subic Naval Bases to call their families in the US Mainland. As a matter of fact, he and Mr. F. Flores II received recognition awards from AT&T for introducing the first USA Direct Service in the global telecommunications industry.

In view of the success of the USA Direct Service in the Philippines and considering that the Service Improvement Program is a continuing effort on the part of the AT&T, it may be noted that in June 17, 1994, AT&T made another technical assistance proposal to improve completion rate as shown in the Attachment.

For your information and consideration.

Nestor A. Virata
NESTOR A. VIRATA
Senior Vice President

/lar

ANNEX "B-1"

AT&T/PLDT MEETING

AT&T PRESENTATION

17-Jun-94

by Messrs. W. Tanner & W. Wayne

Outline

- AT&T People Involved in Project
- Rationale for Project
- Objectives of Project
- Reasons for Network Planning
- Summary

Rationale For Project Proposal

To Increase Traffic Completion Between Philippines and the U.S.

- Increase Both Way Revenues
- Improve Quality of Service to Our Mutual Customers

International Network Call Completion History

Year	Answer-Seizure Ratio (ASR)	
	ARENTO to AT&T	AT&T to ARENTO
1985	61.0%	24.5%
1986	65.5%	29.6%
1987	65.4%	30.5%
1988	68.1%	36.3%
1989	68.9%	36.5%
1990	72.0%	35.9%
1991*	69.0%	35.2%

*YTD = Year to Date